

1 **MINUTES OF THE REGULAR MEETING** of the City Council of the City of Orange City, Florida,
2 held on Tuesday, March 22, 2011 at 7:00 p.m. in Council Chambers, 201 N. Holly Avenue, Orange
3 City.

4
5 **CALL TO ORDER**

6
7 The meeting was called to order at 7:00 p.m. by Mayor Strickland and roll call was taken.
8

9 **ROLL CALL**

10
11 **PRESENT:** Mayor Harley Strickland; Vice Mayor O. William (Bill) Crippen; Council Members Jeff
12 Allebach, Tom Laputka, Tom Abraham, Anthony J. Pupello, Gary A. Blair; City Attorney William
13 Reischmann; City Manager Jamie Croteau; City Clerk Deborah Renner
14

15 **INVOCATION**

16
17 The Invocation was given by Pastor John Greglywicz, New Life Bible Church, followed by the Pledge
18 of Allegiance.
19

20 **1. ABSENCES**

21
22 Shall the absence of Council Member Tom Abraham on March 8, 2011 be excused?
23

24 **Council Member Allebach moved that Council Member Abraham’s**
25 **absence from the March 8, 2011 Regular Council meeting be excused,**
26 **seconded by Council Member Blair.**
27

28 Council Member Abraham advised that he was sick and not able to attend the meeting.
29

30 **Motion passed with a 7/0 roll call of the Council.**
31
32

33 **2. PRESENTATIONS/PROCLAMATIONS:** Proclamation–National Public Works Week
34

35 Council Member Laputka read a proclamation into the record proclaiming May 15 to May 21, 2011
36 National Public Works Week in the City of Orange City. Public Works Director, Paul Johnson came
37 forward to accept the proclamation.
38

39 Proclamation – Water Conservation Month
40

41 Council Member Laputka read a proclamation into the record proclaiming April 2011 Water Conservation
42 Month in the City of Orange City. Council Member Laputka accepted the proclamation on behalf of the
43 Sustainable Water Committee and noted that a citizen’s participation meeting is scheduled on April 5th at
44 the library hall.
45

46 Presentation - Audit-Fiscal Year 2009/2010
47 Tom Reilly, Holland & Reilly, CPA
48

1 Tom Reilly, Holland & Reilly, CPA came forward to present the Fiscal Year 2009-2010 Annual Audit
2 Report. Using a Power Point presentation (a copy of which is attached and becomes a permanent part of
3 these minutes) Mr. Reilly gave an overview of the audit process. He stated Holland & Reilly issued an
4 unqualified audit opinion for FY 2009-2010 which means the financial statements were prepared in
5 accordance with Generally Accepted Accounting Principles (GAAP), with no exceptions noted. A single
6 federal audit was not performed because the City's federal expenditures were not in excess of \$500,000.
7 The financial statements will be submitted to the Government Finance Officers Association (GFOA) for
8 their "Certificate of Achievement" award which the City has received for the past nine years.

9
10 Mr. Reilly began his presentation with a discussion of General Fund Revenues and Expenditures noting the
11 financial statements are composed of the government wide and fund financial statements. He listed the
12 highlights noting that the SBA investment earnings increased this year. The City is still carrying a liability
13 of overpayments from FEMA which overstates the assets and liabilities. Staff contacted FEMA and was
14 advised a settle-up audit would be conducted to resolve this matter. The Fire Services agreement with
15 DeBary generated \$884,000 in revenue. The City spent over \$1.7 million on capital expenditures which
16 included the purchase of a new fire truck, several police vehicles, street resurfacing and traffic lights. The
17 City incurred no new debt during FY 2009-2010.

18
19 Mr. Reilly noted the water rates were not increased in 2010 because the alternative water use fee, which
20 included a \$4 flat fee and a 25% assessment on water usage, was imposed. He said the purpose of the
21 alternative water fee was to provide funding for alternate water sources. However, last year, Council
22 waived the flat fee for customers who use 6,000 gallons of water or less. This action generated \$463,000 in
23 additional alternative water fees. Water revenue did not increase because the rates stayed the same. Mr.
24 Reilly said the Government Accounting and Standards Board issued GASB Statement 45, which requires
25 the City to address "Other Post Employment Benefits" (OPEB) liability in the financial statements. As a
26 result the City hired an actuary consultant who determined the City's OPEB liability.

27
28 Mr. Reilly stated the City's assets greatly exceeded its liabilities. The combined net total of revenue
29 generated was \$18.3 million. Overall, the City has good liquidity due to the "belt tightening" steps the City
30 took last year such as layoffs and various other cuts.

31
32 Mr. Reilly displayed comparison slides of General Fund revenue and expenditures for the last several
33 years. He explained that he presented the figures both with and without one-time expenditures such as the
34 defunct partnership center because it skews the numbers for the current year. Mr. Reilly stated both the
35 revenue and expenditures have gone down for the last two years. Every year the revenues cover the
36 expenditures with a small amount of surplus.

37
38 Mr. Reilly discussed the General Fund revenues by source. He noted the Charges for Services revenue
39 source increased significantly due to the City's Fire Service Agreement with DeBary. The most significant
40 revenue sources are property taxes, franchise fees and utility taxes. Public safety and fire services were the
41 largest General Fund expenses and personnel the largest expense type by function.

42
43 Mr. Reilly said the fund balance has increased steadily every year and is over \$5.3 million this year. The
44 increase was slight this year due to the cash purchase capital items, but the City is in a "good liquid
45 position."

46
47 Next, Mr. Reilly discussed the Enterprise Fund. He noted a rate study conducted in 2005/2006
48 recommended the water rates be increased annually to cover operating expenses and that the rates increased

1 every year until 2009. Revenue was down the last few years because customers began to conserve water,
2 but has increased slightly this year. Last year the Enterprise Fund generated \$3.4 million in revenue and
3 expensed \$2.9 million. Water and waste water were the largest revenue sources and personnel the largest
4 expense. Net assets of the water fund are on a “steady climb.”

5
6 Mr. Reilly said the City’s investment earnings increased this year due to an increase in the fair market
7 value of SBA Funds. He provided a brief history of the problems with SBA funds noting that the bad
8 securities in Fund B were moved to the Prime Fund upon maturity which increased its value.

9
10 Mr. Reilly concluded his presentation by stating that last year, the Report on the Audit Process pointed out
11 difficulties in obtaining information regarding grants. He said he recommended that grant applications be
12 processed in a centralized manner. While the City complied there was still a lot of decentralization and
13 problems accessing the information for this audit. He stated that was the only “glitch.” Mr. Reilly said he
14 discussed the matter with staff and talked about ways to make sure the audit goes more smoothly next year.

15
16 Council Member Allebach noted some of the budget issues other municipalities are having. He said
17 Orange City does not have the same problems and that is verified by the auditor. Vice Mayor Crippen
18 stated it appears the City is on the right path. In response to a question from Council Member Abraham,
19 Mr. Reilly said that the volume of grants does not warrant the hiring of a grants coordinator. Council
20 Member Abraham said the City was in transition last year with an interim city manager. He asked if that
21 contributed to the lack of coordination. Mr. Reilly responded that he does not know what the problem was,
22 however, it is imperative that the person coordinating grant activity understand the responsibilities
23 involved. Ms. Croteau said she responded to the audit comment. Historically each department handled
24 their own grant applications, however, the Finance Department has now been assigned to track all grant
25 monies and related documents.

26
27 Mayor Strickland questioned whether Mr. Reilly had any specific recommendations that the city could
28 benefit from in future audits. Mr. Reilly noted many municipalities used stimulus money but there is no
29 more. He said the City did the right thing by raising the water rates. It has to be done periodically to cover
30 operating costs. Mr. Reilly suggested evaluating what service the city is seeking to perform and to
31 investigate what grant funding is available.

32
33 **Council Member Allebach moved to accept the FY 2009/2010 Financial**
34 **Audit Report as presented, seconded by Council Member Laputka, and**
35 **passed by a 7/0 roll call vote of the Council.**

36
37 **3. CITIZEN COMMENTS:**

38
39 Don Pierce & Terry Gardner, Bumbino’s Restaurant 2631 Enterprise Rd. came forward and noted that
40 enforcement of sign regulations in the City is “inconsistent.” Mayor Strickland suggested they meet with
41 the City Manager to get a resolution.

42
43 **4. CONSENT AGENDA:** (None at this time)

44
45 **5. ORDINANCES - FIRST READING:**

- 46
47 **A. ORDINANCE NO. 453:** An ordinance of the City of Orange City, Florida,
48 annexing the Laxmi Property into the corporate limits of the City of Orange

1 City, Florida; said property being generally located on the west side of North
2 Volusia Avenue, approximately 50 feet south of West Minnesota Avenue,
3 containing approximately 2.7 acres; in accordance with the voluntary
4 annexation provisions of Florida Statute 171.044; redefining the boundaries of
5 the City of Orange City by amending the appropriate sections of the code of
6 ordinances; containing a repealer provision, a severability clause and
7 providing for an effective date.
8

9 Council Member Allebach read the title of Ordinance No. 453 into the record.

10
11 **Council Member Laputka moved to adopt Ordinance No. 453 on first**
12 **reading, seconded by Vice Mayor Crippen.**
13

14 Jim Kerr, City Planner came forward and displayed a PowerPoint presentation of the subject property (a
15 copy of which is attached and becomes a permanent part of these minutes). He said it contains a motel
16 with 38 rooms and a pool. If this annexation passed, it will extend the City's boundaries to West
17 Minnesota Avenue. Mr. Kerr said the property is contiguous with the City limits and meets Florida statutes
18 for voluntary annexation.
19

20 **Motion passed by a 7/0 roll call vote of the Council.**
21

22 **6. PUBLIC HEARINGS:**
23

- 24 **A.** Appeal of Planning Commission grant of Conditional Use to operate an
25 Assisted Living Facility at 1801 Monastery Road, Orange City, FL
26

27 The Mayor noted that this matter is an appeal of the Planning Commission's decision to grant a conditional
28 use permit to operate an assisted living facility at 1801 Monastery Road. The Mayor noted that he has six
29 requests to speak on this matter. He advised that if anyone else wishes to speak during the course of the
30 hearing, they should raise their hand and he will acknowledge them.
31

32 Mayor Strickland opened the public hearing and asked the City Attorney to advise regarding the process for
33 this hearing.
34

35 Mr. Reischmann noted that the hearing is being held to hear an appeal on the issuance of a conditional use
36 permit to operate a community residential home. He advised that the applicant, Jerry Cutrona, was
37 formally notified of the permit on February 17, 2011. The permit was granted with twelve conditions.
38

39 Mr. Reischmann advised that this matter is quasi-judicial in nature. He explained that most Council actions
40 are either legislative or administrative. A quasi-judicial matter is not a court hearing, however, a specific
41 process must be followed in the deliberations. He clarified that Council is not a "party" to the issue, but
42 rather serves as a "fact-finder" that renders a decision based on the rules. The "parties" are the applicant
43 (property owner) and Mr. Dale Atchley and others joining the appeal. Mr. Reischmann advised that the
44 Courts have dictated that Council must make their decision based on certain factors. He noted that the land
45 development code constitutes legislation previously approved by Council and is the starting place for the
46 deliberations. He noted that the current task is to apply that legislation to a specific set of facts. He stated,
47 "That is what quasi-judicial means."
48

1 Mr. Reischmann advised that the subject property is located in the MX zoning district. He noted that in this
2 zoning district, a community residential home or adult living facility (ALF) is only allowed as a conditional
3 use. Mr. Reischmann advised that the deliberations of the Planning Commission were also quasi-judicial.
4

5 Mr. Reischmann referred to Section 3.7 of the land development code. He said that the City Council's
6 actions are limited by the laws in the code. They will listen to the testimony and then they must apply the
7 rules in the land development code to that testimony. Section 3.7.4 of the code sets forth the guidelines that
8 the Council must follow in their deliberations. Mr. Reischmann read some of those guidelines as follows;
9 (1) will the property owner be able to meet the requirements of state and local governments, (2) will the
10 home create undue traffic congestion, (3) will it create a hazard or a public nuisance or danger to
11 individuals and the public, or (4) will it materially alter the character of the surrounding neighborhood. He
12 noted that in total, there are nine factors set forth in the land development code which must be considered in
13 the Council's decision.
14

15 Mr. Reischmann advised that all parties to this matter will be allowed to speak during the hearing. Mr.
16 Reischmann administered an oath to all of those wishing to speak. He asked that when each speaker comes
17 forward, they state their name and address for the record. He advised that if someone decides later that they
18 wish to speak, they can take an oath at that time. Finally, Mr. Reischmann stated that the Council will
19 make their decision based upon the record and the testimony provided tonight. He stated that any
20 communications Council has had on this matter outside of the hearing are considered "ex-parte" and must
21 be revealed. Mr. Reischmann explained that a site visit or direct communications with the applicant or any
22 other interested party would be ex-parte communications and he asked that they be disclosed at this time.
23

24 Council Member Abraham disclosed that he had made a site visit, but that he did not have any
25 communication with anyone in the area except a neighbor who directed him to the subject property.
26

27 Vice Mayor Crippen advised that he did not have any ex-parte communication on this matter.
28

29 Mayor Strickland disclosed that he had a conversation with Realtor Bernie Senez at a public restaurant and
30 asked him questions about a property which he thought was the subject property on Monastery Road, but
31 which later turned out to be somewhere else. He stated that he had no other communications.
32

33 Council Member Allebach disclosed that he received a phone call from Dale Atchley on February 17th after
34 the Planning Commission meeting. He said that he mistakenly told Mr. Atchley that the matter would
35 come before the Council "as a matter of course." He advised that he had also spoken to Development
36 Services staff members Wendy Hickey and Alison Stettner to obtain a copy of the state statute regarding
37 Community Residential Homes and that he encouraged them to make sure a copy was provided to all those
38 with an interest in this matter.
39

40 Council Member Pupello stated that he has had no ex-parte communication.
41

42 Council Member Laputka stated that he attended the Planning Commission meeting when this matter was
43 discussed. He said that he discussed the issue of an appeal with Richard Darling after the meeting. He
44 disclosed that he also had a brief meeting with Dale Atchley.
45

46 Council Member Blair stated that he had no discussions.
47

1 Council Member Abraham referenced the nine conditions previously read by Mr. Reischmann and asked
2 Mr. Reischmann to elaborate. Mr. Reischmann clarified that one or more of the conditions must be present
3 for the Planning Commission or the Council to deny the conditional use request. He read the first of the
4 code conditions again as follows: "The applicant will not be able to meet all requirements imposed by
5 federal, state, or local governments or by the planning commission." Council Member Abraham clarified
6 that he was questioning whether the applicant could meet the State requirements for an ALF. Mr.
7 Reischmann noted that this question required a factual response and that he can only respond to matters of
8 law. He suggested that the question be asked of staff or the applicant.

9
10 Wendy Hickey, Planning & Zoning Analyst, came forward. She began by stating that the appeal is
11 regarding a planning commission decision rendered on February 16th to grant a conditional use to operate an
12 ALF Community Residential Home. She clarified that according to the City's code, a home with less than
13 five residents is considered a "family home." The next level is an ALF, there is nothing in between these
14 two. The State of Florida has a classification known as a "community residential home" with between
15 seven to fourteen residents. She stated that according to State Statute, that type of home can be placed in a
16 residential zoning district.

17
18 Ms. Hickey noted that Council received the same packet of information that was received by the Planning
19 Commission. The packet includes Section 3.7 of the City's code and staff's findings on each of the nine
20 questions. In addition, ten conditions were placed on the property when it came to the Planning
21 Commission. Ms. Hickey discussed those conditions (a copy of which is attached and becomes a
22 permanent part of these minutes). The Planning Commission concurred with the ten conditions and also
23 placed two additional conditions which must be completed prior to the granting of the permit; a traffic
24 impact study and a maintenance plan for Monastery Road. Ms. Hickey noted that Monastery Road is a
25 private road in the area in question.

26
27 Council Member Blair asked whether the subject property is on a sewer system. Ms. Hickey responded that
28 it is connected to the Country Village sewer system.

29
30 Mayor Strickland asked Ms. Hickey to elaborate on the MX zoning district. Ms. Hickey stated that MX is
31 an area where there is a balance between the residential and commercial portions.

32
33 In response to a question from Council Member Laputka, Ms. Hickey clarified that a conditional use is
34 needed because the zoning matrix only allows this type of business with such a permit. Council Member
35 Laputka asked whether the conditional use would remain with the property if the applicant moved
36 elsewhere. Ms. Hickey responded that it is attached to the owner of the business. Mr. Reischmann read the
37 definition of "conditional use" from the code as follows: "That use which would generally not be
38 appropriate throughout a particular zoning district but which if controlled as to number and magnitude, area
39 coverage, location or relation to the neighborhood, buffering, hours of operation and the like, may not
40 adversely impact the public health, safety, morals, order, comfort, convenience, appearance prosperity or
41 general welfare." He stated that only those uses which are listed in 8.6.1 within a zoning district as
42 conditional uses can be considered. He clarified that an ALF is listed in this section as a conditional use.

43
44 Council Member Laputka asked who owns Monastery Road. Ms. Hickey responded that each property
45 owner on the road owns the piece in front of their property. Mayor Strickland noted that Kentucky Avenue
46 has a similar ownership arrangement.

47

1 Council Member Crippen read from the minutes of the Planning Commission meeting when this matter was
2 discussed as follows, "Mr. Reischmann said it appears this is an older neighborhood and at the time it was
3 developed there was a reservation of ownership of title to the rights of way by the original developer." He
4 asked whether this meant that the right of way is owned by the original developer and the road is owned by
5 the property owners. Mr. Reischmann responded that he meant there was not a dedication of the right of
6 way to the government at that time. He explained that normally when a large piece of land is subdivided,
7 the rights of way (access) is either dedicated to the public or they remain private. In this case they
8 remained private. He further clarified that most times, there is common private ownership of the roads,
9 which are usually owned by the homeowners association. In this case, the developer chose to divide
10 ownership of the road into rectangles belonging to each lot owner.

11
12 Council Member Abraham noted that the property had previously been used as a foster home. He asked
13 whether any conditions were imposed on the owners at that time. Ms. Hickey responded in the negative,
14 stating that staff was not aware of that previous use until the night of the Planning Commission meeting.

15
16 Council Member Pupello noted that references to "deed restrictions" were mentioned a number of times in
17 letters which are part of the appeal packet. Ms. Hickey said that the deed that she obtained from the Clerk
18 of the Court contained no such restrictions. In addition, one property owner contacted by staff said that she
19 had no restrictions attached to her deed. Council Member Pupello noted that it was alleged that
20 improvements to the property began prior to any approval being granted. Ms. Hickey concurred and
21 advised that Mr. Cutrona is a licensed contractor and that he had been doing residential repairs to the home
22 prior to any input from staff regarding the issue that it would be anything other than a single family
23 residence.

24
25 Dick Darling, Blue Springs Realty, came forward and noted that deed restrictions did exist in 1987 and that
26 he has them at his office. He said that he obtained them from the County records.

27
28 Mr. Reischmann responded to Mr. Darling's observations by stating that it is the City's job to make sure
29 that the rules in the development code are followed. He said that deed restrictions are "like a private
30 contract" between property owners. He said that allegations of a breach of that contract could be pursued in
31 circuit court by the owners of the property subject to the deed restrictions.

32
33 Patrick Hepburn, 1809 Monastery Road, came forward and noted that he owns the property adjacent to the
34 subject property on the east side. Mr. Hepburn said that when he noticed the construction going on he was
35 initially told that the builder's mother and some friends may live in the house. Subsequently, he received a
36 letter regarding a meeting. Mr. Hepburn suggested that the property owners on the street should have had
37 more notification of the Planning Commission meeting. Mr. Hepburn said that they need "more response
38 time and they need more consideration of their opinion." He asked, "Wouldn't it be something if we put
39 something in the middle of a small residence, a residential area, and nobody wanted it but it was approved
40 to be put there?" Mr. Hepburn said that the neighbors are "defending their neighborhood as best we can."
41 He noted that the property owners on the street are not "professionals" in these issues. Mr. Hepburn
42 concluded by stating, "If no one is in favor, in the neighborhood, of having a commercial entity like this
43 there, why would it be approved?"

44
45 Council Member Abraham asked whether Mr. Hepburn submitted an appeal form. Mr. Hepburn responded
46 in the affirmative. Council Member Abraham asked Mr. Hepburn whether he received enough information
47 by mail from the planning department. Mr. Hepburn responded in the affirmative, however, he said that he
48 didn't have enough time to prepare for the meeting. He stated, "It was a very short time frame to get a lot

1 done and we have lives too.” Council Member Blair asked how much in advance of the meeting the notice
2 was received. Mr. Hepburn responded that he couldn’t remember for sure, but that a March meeting was
3 rescheduled for February and he was unable to attend, but that he did listen to the CD audio of the meeting.
4

5 Mr. Reischmann advised that the City’s notice requirements are set forth in the code. The code also states
6 that parties have fifteen days in which to appeal a decision made by the Planning Commission and that in
7 this case, that requirement was met.
8

9 Ms. Hickey stated that mailed notification of the meeting was given to those property owners within 250
10 feet of the subject property. She said that the notice is mailed out ten or eleven days prior to the meeting.
11 She said that a copy of the ad that is submitted to the newspaper is what is mailed to adjacent property
12 owners. The ad runs in the News Journal ten days prior to the meeting. Ms. Hickey submitted a copy of
13 the notice which was published in the News Journal along with the list of who received the notice for the
14 record.
15

16 Council Member Blair expressed concern that the meeting was originally scheduled for March, but was
17 rescheduled to an earlier date. Ms. Hickey advised that all notices contained the proper date of February
18 16th. Ms. Hickey provided a copy of the list of people who were mailed a notification of the Planning
19 Commission meeting to each Council Member (a copy of which is attached and becomes a permanent part
20 of these minutes). In the case of tonight’s public hearing, the appeal applicants were also mailed a copy of
21 the meeting notice. In addition, an advertisement was placed in the News Journal for both meetings. Ms.
22 Hickey noted that the sign advertising the public hearing which was posted on the property was either
23 bright orange or green.

24 Council Member Abraham noted that he did not see the address of 1815 Monastery Road listed as an appeal
25 applicant. Ms. Hickey confirmed that it was listed.
26

27 Nancy Boyce, 1731 Monastery Road, came forward and stated that she has lived at this address for
28 thirty-three years. She said that the recent approval to allow an ALF on Monastery Road was a “shock.”
29 She said that she did receive a notice of tonight’s meeting in the mail. Ms. Boyce stated, “I am certain
30 allowing this ALF to open will adversely affect my right to quiet enjoyment of my property. For all
31 described intents and purposes, this is a business whether you term it commercial or residential.” Ms.
32 Boyce stated that she was not in favor of this facility and that she supports the appeal.
33

34 Council Member Pupello asked Ms. Hickey to discuss the “balance” between residential and commercial in
35 an MX zoning district. Alison Stettner, Development Services Director, came forward and responded that
36 in MX2 zoning the current mix is 70% commercial and 30% residential.
37

38 Council Member Crippen asked what a desired balance would be in MX. Ms. Stettner responded that as
39 long as the mixture of uses continues to stay mixed within the entire area it is acceptable. She advised that
40 30% would likely be the minimum for a residential area. She said that it must fall within the range
41 specified in the comprehensive plan.
42

43 Council Member Abraham stated that he read in Ms. Boyce’s appeal that the area was originally developed
44 for single family homes as part of the Country Village development. He asked whether this was true. Ms.
45 Stettner stated that the plat for Country Village does not show this subdivision as part of the plat for
46 Country Village.
47

1 Robert Austin, 1833 Monastery Road, came forward and voiced his opposition to the project at 1801
2 Monastery Road. He stated that he did attend the Planning Commission meeting in February and voiced his
3 concerns, but he felt they thought he was “just taking up their time.” Mr. Austin said that he was initially
4 told by Jim Kerr, City Planner, that the Planning Commission meeting would be held on March 2nd. He
5 said that he found out because of the sign which was “buried in the flower beds.” Mr. Austin said that
6 Monastery Road is a “small private road” and is not equipped to handle emergency vehicles. He advised
7 that the road is one lane with no space to turn around at the dead end. Mr. Austin suggested that this will
8 place a financial burden on the residents due to the need for repairs to the road. He further suggested that
9 the locating of a commercial entity in a residential neighborhood would lower property values. Mr. Austin
10 discussed how he believed the ALF would affect his quality of life. He said that when he first bought his
11 property, he was forced to obtain cable through the group plan in place at Country Village. In conclusion,
12 Mr. Austin urged the Council to take the impact on the residents on Monastery Road into “serious
13 discussion and review.”
14

15 Council Member Pupello addressed concerns about the dead end street by noting that staff had required a
16 circular drive on the property. Ms. Stettner concurred that one of the conditions was to improve the circular
17 drive already in place. In addition, Mr. Cutrona will be required to bring back a maintenance plan for the
18 roadway.
19

20 Dale Atchley, 1825 Monastery Road, came forward and distributed a copy of the minutes of the February
21 16th meeting of the Planning Commission, minutes of the Planning Commission meeting from September
22 2009. Mr. Atchley noted that the minutes leave a lot out. He stated that the minutes are “basically one
23 person’s interpretation of what was said.” Mr. Atchley stated “What was done is absolutely wrong, but the
24 way it was done is more disturbing to me than the fact that it was done.” He said that the proposed ALF is
25 a commercial entity in “a very quiet, single family residential neighborhood.” He noted that the owner will
26 not live on the property and it will be operated by paid staff. Mr. Atchley stated that there will be up to ten
27 residents along with live in staff, as well as support staff coming and going. He stated that guests will pay
28 to stay there, “much like a hotel.” He expressed his concern regarding traffic, noting that the road is a
29 sixteen foot wide privately owned road. Mr. Atchley expressed his further concern over emergency
30 vehicles on the road, noting that the response consists of a minimum of two large vehicles. He noted that
31 the circular drive would also be used for parking which would prohibit vehicles from turning around there.
32 He questioned the accessibility to the residents of the home with vehicles parked in the front.
33

34 Mr. Atchley noted that the large door in the front had been replaced with a small door. He said that the
35 interior of the building is “all chopped up with narrow hallways” and he reiterated his concern over
36 accessibility to the residents in the event of an emergency. Mr. Atchley expressed that parking would be an
37 issue at the facility. He distributed a photo of the house taken before tonight’s meeting which shows five
38 vehicles parked in front. He stated, “You can see that front yard is full, including the driveway, with those
39 five vehicles.” Mr. Atchley expressed further concern regarding trash at the facility. He noted that there is
40 only one trash pickup per week and that the trash trucks must back out of the road because there is no place
41 to turn around.
42

43 Mr. Atchley discussed the notice provided. He observed that the 250 foot requirement for notice would
44 only involve two people in some instances. He suggested that all nine property owners on the street should
45 have been notified. He advised that the letter sent by Mr. Cutrona did not provide notice of the meeting,
46 and that the original sign which was posted did not provide adequate notice. He suggested that planning
47 and zoning issues were being ruled on by staff who don’t live in Orange City. He stated, “They don’t care
48 about what happens in Orange City.”

1 Mr. Atchley stated that he was unable to attend the Planning Commission meeting on February 16th but that
2 he had listened to the audio from the meeting. He took objection to the letter sent by Mr. Cutrona to other
3 residents on the street. Mr. Atchley noted that Mr. Cutrona said that he purchased the home out of
4 foreclosure when in fact the house was purchased out of foreclosure in 2010 and Mr. Cutrona purchased it
5 sometime after that. He stated that the house was never a foster home as alleged by Mr. Cutrona in his
6 letter. The property in question is listed in the County records as a four bedroom home which is being
7 converted into a nine bedroom home by Mr. Cutrona. Mr. Atchley stated, "To me, that takes it beyond
8 residential." He noted that the minutes state that a registered nurse would be coming to the facility on a
9 regular basis and observed that this would add to the traffic issue.

10
11 Mr. Atchley quoted from the minutes of the September 2009 Planning Commission minutes wherein Jim
12 Kerr, City Planner, stated that an ALF could not be considered residential units and would be viewed by
13 staff as a commercial development. Mr. Atchley stated, "Basically, what you have here, yes, yes, it is a
14 commercial entity in the middle of a residential area." He referenced the City's land use map and said that
15 he had discussed it with Chester Murray, former Development Services Director, who told him the MX
16 zoning on the map was put in place to allow for Planned Unit Developments which could then be developed
17 properly and made a part of it. He noted that Country Village retained its MH zoning and stated that he
18 spoke to a number of property owners who understood that Monastery Road is part of Country Village and
19 should have been excluded from the MX zoning.

20
21 At the February 16th Planning Commission meeting, staff had indicated that Mr. Cutrona hoped to gain his
22 final approval at the meeting. Mr. Atchley stated that he researched two years of Planning Commission
23 minutes and that the Commission had voted with staff's recommendation 100% of the time. He said that it
24 appeared the concerns of the citizens were meaningless at the meeting on the 16th.

25
26 Mr. Atchley continued to review the proceedings from the February 16th Planning Commission meeting,
27 reading and commenting from the minutes. He noted that the Fire Department had responded to the ALF at
28 John Knox Village 40 times in the past ninety days. He said that there are 49 units at the John Knox ALF
29 and calculated that this would translate to about one response per week to Mr. Cutrona's facility. Mr.
30 Atchley stated that there have been two emergency responses to Monastery Road in the past ten years.
31 Regarding the traffic study, Mr. Atchley said that Mr. Cutrona predicted one trip per day for each five
32 residents. He said that he did his own traffic study and came up with a count of 41 vehicle trips per day.

33
34 Mr. Atchley returned to his review of the February 16th minutes. He disagreed with Mr. Cutrona's
35 characterization of the ALF as a residential home, stating that it is more like a small hotel or a large Bed
36 and Breakfast. He reiterated his concern regarding traffic generated by the facility. Mr. Atchley noted that
37 there is a thirty-foot right of way on the road and that the house only has a thirteen foot setback from the
38 right of way. He observed that the front yard would not allow room for any type of sod or landscaping once
39 the driveway is expanded, making it into a "parking lot." He questioned Mr. Cutrona's estimate of the
40 number of visitors who would come to the facility, suggesting that it was highly inadequate.

41
42 Mr. Atchley distributed copies of the minutes from the January 2006 Planning Commission meeting. He
43 discussed the issue of the "redo of the MX zoning." He stated that initially, Country Village was going to
44 be changed to MX zoning. That map was redone to exclude Country Village from that change to MX and
45 allow it to retain its Mobile Home or MH zoning designation. He said that he was told by someone that
46 Monastery Road would retain its original zoning as well. He said that the community has always
47 considered them part of Country Village because the community is restricted to over age 55 and has deed
48 restrictions.

1 Mr. Atchley distributed a copy of staff's recommendation to the City Council. He stated that there are nine
2 provisions upon which staff could base a denial. He referenced condition number three, the development
3 will "adversely affect public interest." He noted that staff conceded that an ALF "intensifies and
4 commercializes residential use," but with proper "whatevers" it can be okay. He stated that he disagrees
5 with that finding. Mr. Atchley further noted that the project violates condition number six, "generates
6 undue traffic." Regarding condition number eight, "It will materially alter the character of the surrounding
7 neighborhood or adversely affect value," Mr. Atchley stated, "I think it does both." He stated that the
8 project should have been denied. He requested that the \$500 fee paid to file the appeal be refunded. He
9 further requested that the Council overturn the Planning Commission's decision to grant the conditional
10 use. In conclusion, Mr. Atchley stated, "I would like for you to think about the citizens of Orange City and
11 their future, not just the money part of it. Think about the people, the citizens of Orange City and their
12 future. You were voted on by those people to represent them for those purposes."

13
14 Council Member Blair recalled that when the MX zoning was initiated, the intent was to keep the
15 residential areas intact. He said that he could appreciate the concerns of the property owners present
16 tonight and advised that he would feel the same way if it was his street. He stated, "You've made some
17 good points."

18
19 Council Member Allebach noted that in the minutes of the February 16th meeting, Mr. Cutrona made
20 reference to a property owner on the street who runs a tree clearing business from his home and has a
21 prefab metal building on his property to store his equipment. He asked whether this was accurate. Mr.
22 Atchley responded that it is true. He stated that it is a commercial business, but that it does not generate
23 traffic. He advised that that property is not located in the City limits. Council Member Allebach recalled
24 that at the time Country Village was removed from the MX zoning district, mobile home parks across the
25 state were being sold for development, displacing all the residents who lived there.

26
27 Mayor Strickland recessed the meeting at 9:16, reconvening at 9:27.

28
29 John Boyce, 1731 Monastery Road, came forward and stated that he has lived in Orange City for 25 years.
30 He asked if the residents of Monastery Road could block others from using the road since it is privately
31 owned. He said that he completely agrees with Mr. Atchley.

32
33 Marc Powell, 242 Via Tuscany Loop, Lake Mary, came forward and stated that he is Mr. Cutrona's
34 neighbor and the husband of his project manager. Mr. Powell noted that a great deal of testimony had been
35 given tonight. He noted that Mr. Cutrona's project will have a positive impact on the local economy. He
36 suggested that the future residents of the home will consider the facility their home. He said that the project
37 will be attractive and will not look different than any other ordinary house. Mr. Powell spoke very highly
38 of Mr. Cutrona. He noted that Mr. Cutrona owns over 50% of the property on Monastery Road which also
39 makes him an owner of the road. He suggested that anyone could be in need of emergency services at any
40 time. He stated, "A lot of these complaints appear to me, as an outsider, to be discrimination."

41
42 Jerry Cutrona, 248 Via Tuscany Loop, came forward and stated that he has worked and owned property in
43 Orange City for 29 years. He said that he is very familiar with the City's codes, having served on the
44 Planning Commission. He addressed the question of why he began remodeling the house prior to the
45 conditional use being granted and stated, "Because I know that it can be approved. I know there's no real
46 serious reason to not approve this, this is an allowable use. To not approve it is to discriminate at this point
47 in time." Mr. Cutrona expressed his willingness to comply with whatever restrictions are placed on him.

1 He stated that the house was used as a foster home at some time in the past. Mr. Cutrona advised that the
2 two neighbors closest to him had no problem with the facility and offered to come and testify on his behalf.
3

4 Mr. Cutrona said that he sent letters to people on the street asking them to contact him with any questions,
5 however, he has had no contact from anyone. He advised that he owns the property on the north side of the
6 street for the entire length of the street as well as additional property on the south side of the street. Mr.
7 Cutrona asserted that there are no deed restrictions for the subject property. He maintained that according
8 to Florida case law, deed restrictions would not apply in the proposed use in any event. Regarding the
9 traffic count, Mr. Cutrona noted that the Planning Commission ordered that a full traffic study be done
10 based on the proposed use. He said that he has engaged a professional engineer to do that study. Mr.
11 Cutrona said that the engineer is present and would make a presentation later. He claimed that the proposed
12 use would not involve commercial vehicles coming to the site. He stated, "This is a residential use of this
13 facility." He read the definition of a community residential home from the Florida Statutes. He stressed
14 that the statute uses the term "functional equivalent of a family" in the definition, reiterating that it is not a
15 commercial use. Mr. Cutrona suggested that the apprehension of the other property owners on the street is
16 "unfounded."
17

18 Mr. Cutrona distributed a report regarding the impact of this type of use on a residential area (a copy of
19 which is attached and becomes a permanent part of these minutes). He said that the report was
20 professionally prepared by a certified appraiser. Mr. Cutrona again maintained that most people at these
21 types of facilities do not have visitors. He said that Florida Statutes would allow the home to have many
22 more bedrooms than ten. He noted that there were seven existing bedrooms when he purchased the house.
23 He stated that it was a "Class A" remodel.
24

25 Council Member Abraham stated that he read Mr. Cutrona's submissions to the Planning Commission and
26 Planning Department. He asked Mr. Cutrona to confirm that he would not be housing patients with
27 Alzheimers or dementia. Mr. Cutrona responded that he did not anticipate any residents in the advanced
28 stages of these diseases as he did not feel the facility was equipped for it at this time. He said that they may
29 need a bit of help with medication, etc. and stated, "that's assisted living and that's what we plan to
30 provide." Council Member Abraham asked how potential residents would be screened. Mr. Cutrona
31 stressed that the home is not a medical facility and all potential residents would be screened for suitability.
32 He said that if a resident's needs advanced beyond what could be provided, they would be referred out.
33 Council Member Abraham stated that federal standards require that the services provided by ALFs be
34 classified as Level 1, 2, 3, or 4. He asked what level of care Mr. Cutrona would be providing. Mr. Cutrona
35 responded that the levels do not apply to the proposed use. He said that he recently completed a
36 recertification process as an administrator of assisted living facilities. He stated that there is no mention in
37 the code of Levels, rather it is based on functions the facility is capable of providing. When the resident's
38 needs advance due to certain medical conditions, the facility is required to refer them out to their own
39 physicians. Council Member Abraham reiterated that he found his information regarding levels of care in a
40 study and stated, "I am sorry you haven't come across that." Council Member Abraham noted that Mr.
41 Cutrona does not seem to have a plan to screen the patients prior to admission. Mr. Cutrona responded that
42 every patient will receive a full screening before admission. He stated, "There's no way we can take an
43 individual in our home without having a care plan developed."
44

45 Mr. Reischmann advised that the record reflects that the proposed use must not only meet the City's
46 requirements, but must be licensed by the State of Florida. He stated that there is no evidence to date on the
47 record that there are applicable federal standards that would apply to the proposed use.
48

1 Vice Mayor Crippen observed that there are standards regarding the extent to which the residents may be
2 assisted with their daily living activities in order to qualify to live in the home. He asked whether there is a
3 “degree” of evidence of dementia or Alzheimers which would be applied to determine suitability for
4 residence at the facility. Mr. Cutrona responded in the affirmative stating that it would be part of the
5 evaluation process. He said that if an individual’s needs advance beyond the standard of care the facility
6 can provide, they must be referred out. In response to a question from Vice Mayor Crippen, Mr. Cutrona
7 stated that they would provide administration of medications, but not supervision. He said that under the
8 scope of their license, they are not allowed to give medication to residents.
9

10 Vice Mayor Crippen asked how many staff would work at the facility. Mr. Cutrona responded that he
11 anticipated a husband and wife team who would live at the facility. He stated that if the facility fills to
12 capacity, he would anticipate an additional day worker on site. He clarified that it would depend on the
13 needs of the residents. Mr. Cutrona noted that there is no requirement that “awake staff” be on duty at all
14 times. Vice Mayor Crippen asked how many bedrooms the house will have. Mr. Cutrona responded that it
15 had seven when he purchased it and he subdivided one area for a total of nine bedrooms. He said that he
16 anticipated there could be couples in the house when estimating the occupancy. Vice Mayor Crippen asked
17 if there is a square footage requirement for a single occupancy vs. double occupancy room. Mr. Cutrona
18 responded that all of the bedrooms qualify for double occupancy although he did not plan on that. He said
19 that the state size requirements are “ridiculously small.” Mr. Cutrona said that the house also has an office
20 and a communal dining/living area with a porch in the back. Vice Mayor Crippen asked whether Mr.
21 Cutrona was associated with any other ALFs. Mr. Cutrona responded, “No, I am not.
22

23 Mayor Strickland asked Mr. Cutrona how he would deal with the development of bed sores. Mr. Cutrona
24 responded that it would have to be addressed quickly and if the problem does not clear up, the resident
25 would be referred out to another facility. He advised that his license would allow them to stay at his facility
26 for up to seven days if bed sores exist.
27

28 Council Member Allebach noted that Mr. Cutrona would not have to inform the City of any of the
29 conditions in the house as long as the proper State license was in place.
30

31 Council Member Pupello asked Mr. Cutrona to address previous comments on the monitoring plan for
32 parking impacts and traffic, specifically regarding allegations that the facility will not be accessible to
33 emergency vehicles due to parking on the site. Mr. Cutrona stated that he felt the parking would be very
34 adequate. He said that he hopes to keep the residential appearance of the home as much as possible. He
35 said this is why there would be no parking lot. There would be two spaces on one side and two on the
36 other. The driveway will be double wide to accommodate occasional parking while still allowing vehicles
37 to get by. He noted that occasionally other property owners on Monastery Road park on the street and that
38 there may be extra cars occasionally at his facility if there is a birthday party or other special occasion.
39

40 Council Member Pupello asked how Mr. Cutrona planned to respond to the requirement for a maintenance
41 plan for Monastery Road. Mr. Cutrona responded that the engineers report will show that the traffic impact
42 will be no greater than for an average residential home. He stated, “I don’t see how I should be required to
43 do anything other than a normal residential home on that street.” He said that he would be willing to work
44 with staff to develop a mitigation plan for street maintenance if the need should arise. Mr. Cutrona
45 reiterated that he owns frontage on half of the street and would, therefore, be involved in any type of
46 community effort regarding maintenance of the road.
47

1 Council Member Laputka noted that the approval of the conditional use was given with unfinished
2 conditions still existing. Mr. Cutrona responded that it was with the condition that those points would be
3 addressed. Council Member Laputka said that he would not be inclined to render approval without the
4 completion of a traffic study. Mr. Cutrona responded that the notification requirement of 250 feet indicates
5 that the impact of the development is “relatively small.” Mr. Cutrona stated, “I want to make sure that we
6 keep things in bounds here because there’ve been allegations of all sorts of things based on their own
7 private thoughts or misinformation. Perspective is required here, and credible information.”
8

9 Vice Mayor Crippen asked Mr. Cutrona to address the issues of emergency vehicles and trash at the site.
10 He asked whether Mr. Cutrona had any comparisons to other small ALFs. Mr. Cutrona responded that
11 there would not be any significant trash generation. He said that he disputed Mr. Atchley’s figures on the
12 number of emergency responses. He again claimed that the grocery shopping would be done at local
13 stores.
14

15 Mayor Strickland noted that both he and Vice Mayor Crippen had a background in care for the elderly and
16 could, therefore, understand Mr. Cutrona’s assertions regarding the facility. However, he stated that he
17 could also understand the concerns of the other property owners in the area and asked what could be done
18 to address those concerns. Mr. Cutrona responded that he hoped the factual information to be presented by
19 his engineer would do that.
20

21 John Herbert, P.E., American Civil Engineering, 207 N. Moss Road, Winter Springs, came forward. Mr.
22 Herbert distributed a traffic report (a copy of which is attached and becomes a permanent part of these
23 minutes). He began his presentation by noting that the information in the report came from the ITE
24 (Institute of Traffic Engineers) manual for trip generation. He noted that the ITE does not have a category
25 for community residential homes. Mr. Herbert discussed how he arrived at the multiplier he used in the
26 study and continued to discuss the study in detail. The report concluded that Monastery Road will not be
27 impacted by additional vehicular traffic.
28

29 Mr. Reischmann asked Mr. Herbert if he has an area of expertise in his profession. Mr. Herbert responded,
30 “general civil” which is anything related to land development. Mr. Reischmann asked whether Mr. Herbert
31 has prepared traffic studies before to which Mr. Herbert responded, “Yes.” He stated that he had prepared
32 approximately twenty studies. Mr. Reischmann asked Mr. Herbert if he has had specific training and
33 education in the preparation of traffic studies to which Mr. Herbert responded, “Yes.” He clarified that the
34 subject report is not a traffic engineering assessment of an intersection, but rather it is a traffic generation
35 impact study. In response to a further question from Mr. Reischmann, Mr. Herbert stated that he has the
36 licensing from the State and is qualified to prepare the report which was submitted to the City.
37

38 Dale Atchley came forward to make a rebuttal to Mr. Herbert’s presentation. He noted that Mr. Herbert
39 advised that his report was not based on exactly the same type of use. He noted that Mr. Herbert had made
40 a reference to “fixing” the numbers. He observed that the report submitted was based on findings from the
41 University of Memphis. He stated, “This gentleman performed this for Jerry Cutrona.” Mr. Atchley stated
42 that the size of the facility doesn’t matter. He stated “This study here, when you relate it down to trips per
43 dwelling unit, I’ll stand by these figures and my math and I only calculated fifteen hours a day rather than
44 twenty-four.”
45

46 Nancy Boyce came forward and related her experience with caring for the elderly. Based on her personal
47 experience, she strongly disputed the number of medical professionals and emergency response vehicles
48 associated with caring for this population. She stated, “While it’s a worthy cause, it’s not the right place for

1 it.” She also disputed the amount of trash that will be generated at the facility, estimating that it would be
2 up to three bins a day.

3
4 Jerry Cutrona came forward and read from a report that had been previously submitted which supported his
5 claims that the facility would have no impact on the neighborhood.

6
7 Mr. Reischmann stated, “At this point, it’s up to this Council to discuss the arguments that have been made
8 and the facts that have been presented.” He advised that Council has the right to ask further questions of
9 any of the witnesses if they wish.

10
11 Council Member Allebach referenced a previously submitted report on emergency responses to John Knox
12 Village from the Fire Department and asked specifically which facility it was in reference to. Chris
13 Johnson, Fire Chief, came forward and stated that it is the ALF at 901 Veterans Memorial Parkway.
14 Council Member Pupello asked what requirements from the Orange City Fire Department would apply to
15 this facility. Chief Johnson responded that an alarm system was required along with a residential sprinkler
16 system, a hood system for the kitchen, and other miscellaneous issues such as doorways. Chief Johnson
17 advised that access to the facility post renovation is no different than it was with the previous use. He said
18 that it is not possible to extrapolate the number of calls anticipated based on the health of the residents.

19
20 Council Member Abraham asked whether emergency response vehicles encountered problems when
21 responding to a street where there is no street light. Chief Johnson said that the City responds to many
22 areas that are not well lit and that the vehicles are equipped with lights for this purpose. Council Member
23 Abraham questioned where the nearest fire hydrant is located. Chief Johnson responded that the sprinkler
24 tied into the water main reduces the water flow required for the facility. The hydrant, which is located at
25 Veterans Memorial Parkway and Monastery, is on a 16 inch main. He said that the trucks carry five inch
26 hose which would allow the creation of an above-ground main to the site. He stated, “We’re used to
27 dealing with things like this.”

28
29 Council Member Laputka asked the Chief whether he is “comfortable” with safety at the proposed
30 development. Chief Johnson responded that he is very comfortable because of the additional safety features
31 which were previously discussed.

32
33 At this point, Mr. Reischmann explained that the issue tonight is not legislative in nature. He stated, “It
34 would be my suggestion that the appropriate considerations that you give at this time based upon what
35 you’ve heard this evening, based upon the record, is how does this application fit within 3.7 of your land
36 development code, in particular 3.7.4. Those standards have been addressed by your staff and have been
37 addressed by your Planning Commission. You have heard evidence pro and con this evening on those
38 issues. I would suggest to you that since this is quasi-judicial there is law, and I mentioned this before,
39 there is law that we must follow on how we review the evidence.” He further instructed the Council,
40 “There is clear case law that says we cannot make a decision tonight, you cannot make a decision tonight
41 by simply counting heads. If you do that and the evidence does not otherwise support your decision, your
42 decision will be reversed. Rather, you have to look at what is material. What is competent evidence within
43 3.7.4 such as those matters which have been discussed at length this evening like traffic.” Mr. Reischmann
44 again reviewed the items in 3.7.4. He noted that this is deemed by state law to be a residential use. The
45 City, however, has decided that it is not a permitted use in MX zoning, it is a conditional use. Mr.
46 Reischmann further noted that State law demands that Council rely on experts for certain types of evidence.

47

1 Mayor Strickland stated that he could understand the concerns of the neighbors in this area, but noted that
2 he also took an oath to uphold both state and local laws. He stated, "I would not want to violate that oath of
3 office." Mr. Reischmann stated that Council must "weigh the desires and the concerns of the surrounding
4 neighborhood, but has to balance it and the rights of the property owner." He said that if the City wishes to
5 deny the conditional use, it shall state fully in the records its reason for doing so, citing the factors in
6 Section 3.7.4 of the land development code. Mr. Reischmann stated, "This Council is not acting in a
7 legislative capacity, you're acting in a quasi-judicial capacity much like a judge would have to rule. Not
8 what is popular, but what...the judge has to follow the law." Mayor Strickland said that he felt more
9 comfortable with the proposed project because of the conditions that were placed on the conditional use
10 permit by staff and the Planning Commission to protect the community. Mr. Reischmann noted that there
11 are two "layers of protection" (1) will the applicant meet all of the state and local requirements, and (2)
12 compliance with the additional twelve conditions. Mayor Strickland questioned what remedy the
13 neighborhood would have in the event any of the conditions were violated. Ms. Stettner responded that
14 violations would be processed through the code enforcement process and could result in the revocation of
15 the conditional use permit.

16
17 Council Member Laputka noted that one of the factors in Section 3.7.4 is that the development will
18 "adversely affect the public interest." He noted that is a subjective point. He further noted that it may not
19 have an effect on the general public, while it certainly could affect the other property owners on Monastery
20 Road. Mr. Reischmann suggested that point be considered along with the other points in that Section.
21 Council Member Laputka observed that it appears the applicant meets all of the criteria for the permit. He
22 stated, "I don't have anything that would support point 3 other than the opinion that it may be something
23 that we're not really going to like here."

24
25 Council Member Pupello spoke in reference to the request to waive the fee for the appeal and asked staff
26 how much time was spent on the appeal. Ms. Stettner responded that the fee is \$500 which pays for
27 additional noticing and information. She said that, coupled with staff time, would likely exceed the \$500
28 fee.

29
30 Vice Mayor Crippen thanked the City Attorney for his guidance throughout this process. He commended
31 the Planning Commission for the additional requirements which were imposed. He stated that he was
32 involved in this work with facilities of many sizes over his career. Vice Mayor Crippen stated, "I'm
33 familiar with ALFs and people have to live somewhere."

34
35 Council Member Abraham referenced Section 3.7.4 and stated, "You can deny if you have been convinced
36 that there would be some change in the way these residents would live for so many years ahead if the
37 facility is coming there." Council Member Abraham further stated, "If it will materially alter the character
38 of surrounding neighborhoods or adversely affect the value of surrounding land, structures, or buildings,
39 you can deny it. That's what I understand."

40
41 **Council Member Abraham moved to overturn the decision of the**
42 **Planning Commission for the conditional use to operate an**
43 **Assisted Living Facility on the property at 1801 Monastery Road**
44 **on the basis of evidence received at the meeting from both sides,**
45 **seconded by Council Member Blair. Motion failed by 3/4 roll call**
46 **vote with Council Members Pupello and Allebach, Vice Mayor**
47 **Crippen and Mayor Strickland voting "no."**
48

1 Mr. Reischmann noted that affirmative action is needed on the appeal. He stated, "You don't have a
2 decision. There was a motion that failed. You need to take some sort of affirmative action this evening."

3
4 Council Member Abraham stated, "That affirmative action has to be based on evidence we heard, is that
5 right?"

6
7 **Vice Mayor Crippen moved to uphold the decision of the Planning
8 Commission, seconded by Council Member Allebach.**

9
10 **Council Member Allebach moved to amend the motion to refund
11 the \$500 appeal fee, seconded by Council Member Blair.**

12
13 Council Member Abraham observed that the City Attorney has stated that this is a quasi-judicial appeal
14 hearing. He asked, "How can we vote one way and then immediately vote the other way if we are going to
15 do that?" Mr. Reischmann responded that the original motion did not pass, therefore, no official action was
16 taken by Council. He stated, "It is my legal advice that there be some motion that be made and seconded
17 that passed so the record is clear what this Council's decision is this evening on the appeal." He noted that
18 the pending motion is the amendment dealing with the \$500.

19
20 Council Member Abraham stated his understanding that if a decision is taken, the next step is for either
21 party to appeal the decision to a higher court. Mr. Reischmann responded, "Yes, sir. That's true." Council
22 Member Abraham stated, "It is very clear that both parties have a right to go to a superior court, maybe the
23 circuit court."

24
25 Mayor Strickland clarified that the motion on the floor is an amendment to refund the \$500 appeal fee.

26
27 Council Member Abraham stated, "Then what I understand is that we are doing the same way we listen to
28 ordinances and resolutions. We are not in a quasi-judicial hearing process. That's my understanding of
29 what this attorney is telling you. Do this now, like what you are doing in ordinances and resolutions. If the
30 motion fails, amend it and pass it."

31
32 **Motion to amend to refund the \$500 appeal fee passed by 5/2 roll call
33 vote of the Council with Council Member Abraham and Vice Mayor
34 Crippen voting "no."**

35
36 **Motion to uphold the decision of the Planning Commission passed by 4/3
37 roll call vote as amended with Council Members Blair, Laputka and
38 Abraham voting "no."**

39
40 **7. RESOLUTIONS:** (None at this time)

41
42 **8. DISCUSSION AND ACTION:** (None at this time)

43
44 **9. NEW BUSINESS:** (None at this time)

45
46 **10. REPORTS:**

47
48 **A. City Manager**

1 Ms. Croteau said she wishes to publicly thank Home Depot for donating sod for use at various city
2 facilities. She said the sod will be used at City Hall and Albertus Cottage. Ms. Croteau reported that the
3 automated fuel system is up and running. It strengthens internal controls because it requires everyone to
4 have a fuel card with a pin, to report millage and to track fuel usage.

5
6 **B. Mayor/City Council**

7
8 Mayor Strickland reported he attended a meeting regarding the incubator program. He said the City Clerk
9 has the material in her office if anyone wishes to see it. Mayor Strickland said the City Clerk sent Council
10 correspondence regarding the Florida League of Mayors meeting in Tallahassee. He said that he will be
11 attending the meeting and has invited a local business person to attend.

12
13 Council Member Allebach reported that the Transportation Planning Organization (TPO) found funding for
14 2 design projects but could not decide on an appropriate project. A member city that already had a project
15 in the works and needed additional money to complete the project was awarded the funding. Council
16 Member Allebach stressed the importance of having these types of projects ready to go in order to take
17 advantage of these opportunities. Council Member Allebach reported that he and the Mayor attended
18 Representative Mica's Congressional hearing with the Transportation Committee regarding the long-range
19 transportation plan for Central Florida.

20
21 **C. City Clerk**

22
23 Nothing further to report

24
25 **D. City Attorney**

26
27 Nothing further to report

28
29
30 **11. APPROVAL OF MINUTES:**

31
32 **Vice Mayor Crippen moved to approve the minutes of the March 08, 2011**
33 **Regular City Council Meeting, seconded by Council Member Pupello and passed**
34 **by a unanimous 7/0 voice vote of the Council.**

35
36 **12. COUNCIL COMMENTS**

37
38 Council Member Abraham said he will be attending a Public Administration conference at the University
39 of Central Florida on Friday.

40
41 Vice Mayor Crippen stated, "It was quite an experience tonight. It was very good to show that we have the
42 interest of our community at heart." He thanked the city attorney and staff for their assistance.

43
44 Council Member Allebach thanked Mr. Reilly for the presentation of the audit report. He remarked the
45 City has done a great job "tightening its belt" and keeping costs down. Council Member Allebach said that
46 during the hearing tonight, he heard accusations of the callous manner in which the Planning Commission
47 and the Council made their decisions. He stated, "There was no callous decision made. Some people are

1 not happy with the way it went, some are but that is the problem with being the judge and I don't want to
2 do it again.”

3
4 Mayor Strickland acknowledged this was a long meeting. He thanked everyone for coming and staying for
5 the entire meeting

6

7

8 **13. ADJOURN**

9

10 There being no further business, Mayor Strickland adjourned the meeting at 11:11 p.m.

11

12

13 **RESPECTFULLY SUBMITTED:**

APPROVED ON:

14

15

16

April 12, 2011

17 _____
Gloria Thomas, CMC

18 Deputy City Clerk

19